COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 10, 2002

AT THE RELATION OF THE

STATE CORPORATION COMMISSION — CASE NO. PUE-2001-00298

Ex Parte: In the matter of
establishing rules and regulations
pursuant to the Virginia Electric Utility
Restructuring Act for competitive
metering services

ORDER

By Order issued September 6, 2002 ("Order"), the State Corporation Commission ("Commission") provided interested persons an opportunity to file comments on the Staff Report Presenting Findings and Recommendations for Additional Implementation Efforts for Competitive Electricity Metering filed on August 30, 2002 ("Report"). The Order also sought comments on the issue of whether implementing competitive metering for residential and small commercial customers would be in the public interest. Pursuant to the Order, we received comments on Staff's proposed competitive metering rules from the following parties: the AG, AP, AEP-VA, Virginia Power, UHR, and Energy Consultants.[1]

In the Report, the Staff made four recommendations and addressed a fifth issue without recommendation. The issues and recommendations made in the Staff Report were as follows:

1. That the Staff, with the assistance of the work group, propose rules regarding financial ownership of meters by large industrial and large commercial customers.

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[1] The Division of Consumer Counsel, of the Office of the Attorney General ("AG"), Allegheny Power ("AP"), Appalachian Power Company d/b/a American Electric Power-Virginia ("AEP-VA"), Virginia Electric and Power Company ("Virginia Power"), UHR Technologies ("UHR"), and, collectively, Energy Consultants, Inc., New Era Energy, Inc. and Brayden Automation, Inc. ("Energy Consultants").

2. That the work group direct its focus on monitoring market developments in metering as a precursor to the implementation of any additional elements of competitive metering for large customers.

3. That the work group, and other interested parties, be invited to submit comments with respect to whether it is premature to make a recommendation relative to whether competitive metering for residential and small commercial customers is in the public interest, as well as the relative viability and effectiveness of a competitive approach versus a regulatory approach for advancing the implementation of interval or advanced metering for small customers.

4. That the price signaling studies proposed by the Consumer Advisory Board should be undertaken by a group other than the competitive metering work group.

5. The Staff Report noted that the Consumer Advisory Board has previously recommended that the Legislative Transition Task Force ("LTTF") encourage the Commission and utilities to voluntarily develop time-of-use and demand side management programs. The Staff further noted that previous Commission orders had included specific language encouraging parties to voluntarily develop new or expanded time-of-use programs in Virginia.

Most of the parties, who addressed the issue, were supportive of the Staff's recommendation to proceed with the implementation of rules for customer meter ownership for large industrial and large commercial customers. Furthermore, the majority of parties also agreed with Staff that the work group should direct its focus on monitoring market developments in metering as a precursor to the implementation of any additional elements of competitive metering for large customers. Most of the parties also agreed that it would be premature at this time to implement full competitive metering services for residential and small commercial customers. We address below in further detail each of the issues and recommendations in the Staff Report and the various parties' comments thereto.

Financial Ownership of Meters by Large Industrial and Large Commercial Customers

Consumer Counsel, Virginia Power and Energy Consultants supported Staff's recommendation for developing rules regarding financial ownership of meters by large industrial and large commercial customers. AP, however, stated that it does not believe that customer meter ownership should be considered at this time. AP stated that customer meter ownership is not a major factor in facilitating the development of effective competition in electric service and would require the company to incur costs.

Virginia Power provided comments on the issue of how to define "large customers," although the Staff Report did not address the issue. Virginia Power suggested that the determination should be made on a utility-by-utility basis in accordance with a predefined rate schedule, which would avoid disparate treatment of customers currently within the same rate class or being served under a particular rate schedule. We also note that other work group participants have commented on this issue previously.

Although we cannot conclude at this time that customer meter ownership will be a major factor in facilitating the development of effective competition in electric generation, we believe it is the next logical step in the development of competitive metering services and may lead to technological advancements over time. We direct the Staff, with the assistance of the competitive metering work group, to propose rules regarding financial ownership of meters by large industrial and large commercial customers. Furthermore, in developing proposed rules, the participants shall address the issue of how to define "large customers." The proposed rules shall not affect the local distribution companies' obligation to provide fully regulated metering services to all customer classes. To provide sufficient time for the work group to address the number of issues raised in comments, we ask that proposed rules be filed on or before February 16, 2003.

Implementation of Any Additional Elements of Competitive Metering for Large Customers

Those parties who provided comments unanimously supported Staff's recommendation that the competitive metering work group direct its focus on monitoring market developments in metering as a precursor to the implementation of any additional elements of competitive metering. Consumer Counsel agreed that implementing full unbundling now, in light of the nine statutory implementation criteria, would be imprudent and expensive, given the lack of a competitive market currently and in the foreseeable future. AEP-VA agreed that a more extended schedule for consideration of the entire subject of competitive metering is reasonable. AEP-VA indicated that it intends to continue to offer competitive metering under its Commission-approved tariff provisions and will make available to the Staff any competitive metering information it collects in the administration of its tariff. Virginia Power fully supported the Staff's recommendation.

AP agreed with the Staff's recommendation with the understanding that the work group must be willing to refocus on the development of rules on short notice in the event significant developments in the market occur sooner than anticipated. AP noted that any effort by the work group to proceed with the development of rules for additional elements of competitive metering would ignore the lessons gleaned from other states which, according to AP, demonstrate that these markets are not yet evolved. Energy Consultants noted, in the context that issues of compatibility, safety, meter reading, repair, and other similar details must be resolved and demonstrated, starting only with large customers and then waiting for a period of time to see how this area of restructuring develops across the nation is a reasonable plan.

Upon consideration of the nine statutory implementation criteria in § 56-581.1 C of the Code of Virginia, the lack of a robust competitive metering market to develop anywhere in the country, and the comments in response to the Staff's August report, we believe that it is premature to develop rules for additional elements of competitive metering, beyond meter ownership for large customers, at this time. We also ask that the work group direct its focus on monitoring market developments in metering as a precursor to the implementation of any additional elements of competitive metering. The Staff should report to the Commission on such developments approximately one year after the implementation of rules for meter ownership for large customers. In addition, as we previously directed in our August 19, 2002, Order, we direct the work group to continue to study the possibility of the utilities establishing voluntary and/or expanding time-of-use rate programs for residential and small commercial customers.

<u>Competitive Metering for Residential and Small Commercial Customers</u>

In our August 19, 2002, Order, in response to comments previously submitted by American Energy Institute ("AEI"), we directed the Staff with the assistance from the work group, to examine whether implementation of full competitive metering services for residential and small commercial customers would be in the public interest and asked the parties to provide input on this important issue. AEI did not respond to the Report, but had previously commented that it believes that competitive metering for small commercial and residential customers is not economically viable and would thwart the provision of advanced metering to those customers. AEI has argued that metering economics are such that, to deliver the benefits and savings of hourly metering to all consumers, policymakers must enable long-term financing of meters and take advantage of utility scale economics.

The parties that provided comments on this issue unanimously supported, at this time, a delay in the implementation of full competitive metering services for residential and small commercial customers. AP was strongly opposed to any proposal for residential and small commercial customers that would address additional elements of competitive metering, such as meter ownership. In contrast to AEI's position, the utilities that provided comments on the issue of the method of implementation for small customers, were unanimous in their support of a competitive approach as opposed to a regulatory approach given the current environment of capped rates. In the Report, the Staff commented that given the lack of competitive metering market development anywhere in the country, that it was hesitant to make a recommendation relative to the public interest criteria for the implementation of competitive metering for small customers. The Staff further proposed, with the assistance of the work group, to continue to monitor market developments and explore this important issue.

Based on the unanimous comments received, we believe at this time, that it is premature to make a recommendation relative to the implementation of full competitive metering services for residential and small commercial customers. We note that we have adopted rules, providing small customers the option of obtaining interval metering service from the incumbent utility at the incremental cost above basic metering service. In the Commission's August 30, 2002, Status Report to the General Assembly on retail access, we provided comments on the issue of implementation of interval metering for small customers.[2] Our comments discussed, among

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[2] See State Corporation Commission Report to the Legislative Transition Task Force of the Virginia General Assembly and Governor of the Commonwealth of Virginia, 2002 Status Report: The Development of a Competitive Retail Market for Electric Generation within the Commonwealth of Virginia, Section III, Proposal 11, at 38-42 (August 30, 2002).

other things, different approaches, either regulatory or competitive, to implementation. We direct the Staff with the assistance of the work group to continue to monitor market developments and examine this issue and make further recommendations when appropriate.

Price Signaling Technology

In its Report the Staff noted the Consumer Advisory Board's ("CAB's") proposal to the LTTF concerning a study of Signaling Technology. Staff stated that the CAB proposal is focused on a study and evaluation of communication technologies, well beyond the focus of the competitive metering work group. Staff suggested it would be more appropriate for an independent research institute or national industry experts to initiate, coordinate, and conduct such a study.

Consumer Counsel stated that price signaling studies could provide helpful information regarding the development of a competitive market in the Commonwealth. Consumer Counsel also recommended that any studies recommended by the CAB should be undertaken by a group other than the competitive metering work group. Virginia Power believes the issues related to price signaling studies are very important but do not involve competition in metering services and should not be a part of the work group discussions.[3] Energy Consultants noted that real-time price signaling might not be an appropriate issue for the competitive metering work group. Energy Consultants further stated that real-time price signaling was the most important prerequisite to give customers powerful tools for energy management and to improve the basic efficiency of the electric distribution system. Energy Consultants recommended, among other things, that the Staff should either implement the study of real-time price signaling that was

[3] AEP-VA and AP did not address this issue.

proposed by the CAB or support a recommendation by the CAB to the General Assembly to legislate such a study.

In consideration of the above, we agree that this matter appears to be beyond the scope of the competitive metering group. We believe this finding is consistent with our comments in the Commission's Report to the General Assembly on the status of competition issued on August 30, 2002. In our report, we agreed that the study recommended by the CAB may be beneficial to market participants in the demand controller industry. Furthermore, we stated our belief that an industry-sponsored study conducted by an independent research laboratory would likely provide the best means of quantifying the effectiveness of demand controller systems.

Voluntary Time-of-Use and Demand Side Management Programs

The AG encourages establishment of, and wider publication of currently available, time-of-use ("TOU") programs for all classes of consumers agreeing that such programs may be helpful in promoting better energy management by both consumers and the utilities. The AG agrees with the Commission that the work group should study, and utilities should develop, or expand, such programs for residential and small commercial customers. Virginia Power noted that it has had residential time-of-usage rates for many years and further opines that the market will be "incented" to offer time-differentiated pricing programs that structurally may be significantly different from the TOU rates historically offered by regulated utilities. Virginia Power stated it would be willing to work with competitive service providers ("CSPs") and/or third parties to consider the provision of a CSP market-based pilot TOU program that would be limited in scope. However, Virginia Power noted that a necessary prerequisite to its involvement in facilitating a pilot of this type would be that the costs associated with these pilot programs be borne by the CSPs and/or third parties.[4]

UHR suggested the Commission make a recommendation to the LTTF to propose specific legislation requiring regulated utilities to sponsor experimental TOU/demand side management ("DSM") pilot programs that offer "critical peak" time-based pricing for both the energy commodity and distribution portions of the customers' bills (along with the associated interval metering and communications technology) for up to two percent of all customer classes. UHR also suggested that the SCC recommend that such legislation establish a "critical peak pricing working group" to develop the details of how such pricing should be structured to provide maximum benefit to both utilities and their customers.

Energy Consultants believes that information upon which CSPs can derive rate options and upon which customers can rely to manage operations could be provided through analysis of existing programs, for example, load profile studies could be conducted on those existing utility customers that use load management technology to reduce peak demand. Energy Consultants concluded that the long-term vision needs to be addressed as a separate process (removed from the competitive metering work group), similar to the California rulemaking on policies and practices for advanced metering, demand response, and dynamic pricing. Energy Consultants recommended, alternatively, that the SCC support any proposal by the CAB to the General Assembly for such a critical peak pilot program.[5]

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[4] AEP-VA and AP did not address this issue.

[5] We also note that at its November 19, 2002, meeting, the CAB approved a proposal to the LTTF that requests the Commission to host an Energy Management Work Group sponsored by the energy industry.

In consideration of the above, we believe that the Staff, with the assistance of the work group, should continue to address this issue of voluntary pilot programs as directed by our August 19, 2002, Order.

Motion of Old Dominion Power Company

We now address Kentucky Utilities Company d/b/a Old Dominion Power Company's ("ODP's") Motion For Delay In Implementing Competitive Metering Services until after January 1, 2004, filed October 1, 2002. In support of its motion, ODP states that pursuant to the Commission's Order in Case No. PUE-2000-00740, ODP is required to transition to retail choice in its Virginia service territory on or before January 1, 2004. ODP states that "any corresponding energy services should not be implemented until the advent of retail choice in its service territory."

In our December 21, 2001, Order issued in this proceeding, in response to an earlier request by ODP to delay implementation of competitive metering services in its Virginia service territory until after January 1, 2004, we granted ODP a delay in the implementation of competitive metering services for large industrial and commercial customers until the later of January 1, 2003, or the implementation of retail choice in its Virginia service territory on or before January 1, 2004. ODP's current motion requests a delay of implementing competitive metering for all customer classes. We believe that extending the delay for implementing competitive metering to all customers is appropriate given the Company's January 1, 2004, phase-in date for retail access and ODP's unique situation, including its small, isolated service territory.

Accordingly, IT IS ORDERED THAT:

(1) The Commission Staff shall proceed with the assistance of the work group to develop rules regarding financial ownership of meters for large industrial and large commercial customers and shall file proposed rules on or before March 4, 2003.

(2) ODP is granted a delay in the implementation of competitive metering services for all customer classes until the later of January 1, 2003, or the implementation of retail choice in its Virginia service territory on or before January 1, 2004.

(3) The Commission Staff shall proceed with the assistance of the work group to address those issues identified in this Order, issues we have identified in previous orders, as well as issues that arise during the efforts of the work group.

(4) This matter shall be continued for further proceedings consistent with this Order.